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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,585	02/06/2004	Dennis B. Jenkins	430.190	6736
7590 04/13/2007 JOEL J. HAYASHIDA CORPORATE PATENT COUNSEL THE CLOROX COMPANY P.O. BOX 24305 OAKLAND, CA 94623-1305			EXAMINER MERCIER, MELISSA S	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/13/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,585	<b>Applicant(s)</b> JENKINS ET AL.	
	<b>Examiner</b> Melissa S. Mercier	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 101 and 114-127 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 101 and 114-127 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8-11-05</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on March 23, 2007 is acknowledged. The traversal is on the ground(s) that searching all claims does not constitute a search burden to the examiner. This is not found persuasive because the different groupings would require different key words and database searches.

The requirement is still deemed proper and is therefore made FINAL.

### **Summary**

Claims 101 and 114-127 are pending in the application. Claims 101 and 114-127 are rejected. Applicant has cancelled claims 1-100 and 102-113 in response to the Restriction Requirement and has added claims 114-127.

### ***Information Disclosure Statement***

Receipt of the Information Disclosure Statement filed on February 6, 2004 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 101, 114-119, 121-122, and 124-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratcliff et al. (US Patent 4,949,672).

Ratcliff discloses a clay based animal litter to which has been applied a liquid carrier containing a boron-containing compound in an odor-controlling effective amount. The boron-containing compound acts by antimicrobial action, controlling urease, or a combination of these mechanisms when the litter is used by the animal (abstract).

The litter can further include adjuncts selected from dyes, antimicrobial agents, deodorants, fragrances, pigments, dedusting compounds, and mixtures thereof (column 2, lines 11-14).

Radcliff discloses a wide variety of materials can be used for litters, including porous clays such as Georgia White clay, bentonite, montmorillonite, fossilized plant materials, expanded perlites, zeolites, gypsum and other equivalent materials. The clay particles are comminuted. That is, they are pelletized or formed into particles, which have a size varying from 50 to 5600 microns (column 4, lines 33-52).

Radcliff further discloses a method of coating the particles. It is the examiners position that since Radcliff discloses dyes and pigments as additional adjunctive components, it would be within the knowledge of one of ordinary skill in the art at the time the invention was made to have coated the zeolite particles with a color altering agent.

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various absorbing compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held

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that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See *In re Russell*, 439 F.2d 1228 169 USPQ 426(CCPA 1971).

It has been held that combinations of two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. *In re Susi*, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-77, 126 USPQ 186, 188 (1960). As the court explained in *Crockett*, the idea of combining them flows logically from their having been individually taught in prior art. Therefore, since the reference teaches that clays including bentonite clay and zeolites are effective absorbing materials in compositions for litter, it would have been obvious to combine these components the expectation that such a combination would be effective in litter. Thus, combining them flows logically from their having been individually taught in prior art.

Claims 101, 114-119, and 121-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanislawski et al. (US Patent 5,016,568).

Stanislawski discloses an odor controlling animal litter comprising absorbent particles. The litter may further comprise antimicrobial additives (abstract), dyes and pigments (column 4, lines 65-68). Stanislawski discloses a variety of materials can be used for litters including porous clays such as aluminosilicates including attapulgite, bentonite, montmorillonite; fossilized plant materials, expanded perlites, zeolites,

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gypsum, and other equivalent materials; sawdust, wood chips, paper or other cellulose based materials can also be utilized including compacted paper, or processed, recycled pulp. The litter particles have an average particle diameter of 50-5,600 microns. Those skilled in the art will vary particle size so as to optimize absorbency/adsorbency, and to control dusting or tracking by the animal (column 4, lines 26-49).

Stanislowski further discloses a method of coating the particles. It is the examiners position that since Stanislowski discloses dyes and pigments as additional adjunctive components, it would be within the knowledge of one of ordinary skill in the art at the time the invention was made to have coated the zeolite particles with a color altering agent.

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various absorbing compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See *In re Russell*, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).

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It has been held that combinations of two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. In re Susi, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-77, 126 USPQ 186, 188 (1960). As the court explained in Crockett, the idea of combining them flows logically from their having been individually taught in prior art. Therefore, since the reference teaches that clays including bentonite clay and zeolites are effective absorbing materials in compositions for litter, it would have been obvious to combine these components the expectation that such a combination would be effective in litter. Thus, combining them flows logically from their having been individually taught in prior art.

Claims 120 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratcliff et al. (US Patent 4,949,672) or in the alternative Stanislawski et al. (US Patent 5,016,568), in view of Fleischer et al. (US Patent 4,621,011).

The teachings of Ratcliff and Stanislawski are disclosed above and applied in the same manner.

Neither Ratcliff nor Stanislawski disclose the use of activated carbon in their litter formulation.

Fleisher discloses an animal litter comprising cellulose particles (abstract) and activated carbon, used as an odor counteractant (column 7, lines 1-2).



It has been held that combinations of two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. In re Susi, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-77, 126 USPQ 186, 188 (1960). As the court explained in Crockett, the idea of combining them flows logically from their having been individually taught in prior art. Therefore, since the references teach litters comprising absorption materials and odor reducing agents, it would have been obvious to combine these components the expectation that such a combination would be effective in litter. Thus, combining them flows logically from their having been individually taught in prior art.

### ***Conclusion***

No claims are allowable. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

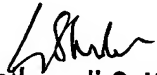
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MSMercier



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